IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2447 OF 2003
IN
SUIT NO.1381 OF 1999

SBI Capital Markets Ltd.....Plaintiffs

Versus

Patheja Brothers Forging and
Stampings Ltd. & Ors.....Defendants

And

Joint Commissioner,
CentralExcise, Pune.....Respondents

Mr.Berjis Colabawala i/b.Kanga & Co., for the Plaintiffs
Ms. K.C. Sidhwa i/b. Mehta & Girdharlal for Respondent Nos. 2 and 3.
Mr. S.R.Rajguru, for Respondents

CORAL: F.I. REBELLO, J.
DATE : 12th October,2004

P.C.

1. Order dated September 8, 2003 was passed after hearing the plaintiff and defendants. On behalf of the respondent the Officer of Central Excise was present. The Motion was allowed in terms of prayer clause (a) and (b). Prayer clause (a) was to appoint Receiver including the power to hand over the equipments described in Exhibit H to the affidavit in support of the Notice of Motion. Prayer clause (b) was upon handing over the equipments to the Court Receiver to stand discharged and the plaintiffs were permitted to dispose of the said equipments by private treaty or public auction as they may think fit. At the same time the rights of the Excise Department were kept alive. This does not mean that the Excise Department was allowed to restrain or not to hand over possession of the property to the Receiver. Failure to hand over property for all purposes sounds in contempt.

2. The order of September 8, 2003 only meant that even if the property was sold by the plaintiffs if the Excise Department had any right to the proceeds on they being sold, that was protected. In the instant case on behalf of the Excise Department it is pointed out that they have passed an order of confiscation. That is subsequent to the order of this Court dated September 8, 2003. Considering the contentions and arguments the following order;-

(i) As per the order dated September, 8, 29003 the Excise Department is bound to hand over possession of the equipments forthwith to the Receiver.

(ii) On account of subsequent events the Excise Department claims any right it will be open to them to move this Court either for variation of the order of such other order which in law they are legally advised to do.

With the above clarification pracipe disposed of.

. Receiver to act on an ordinary copy of this order duly authenticated by the Associate/Personal Secretary of this Court.

(F.I. REBELLO, J.)